

SENATE BILL No. 661

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-9-4; IC 24-5-20.

Synopsis: Consumer item pricing rights. Requires consumer items to be marked with clear and readable prices. Exempts certain items from the pricing requirements and allows merchants to select additional exempt items. Prohibits merchants from charging more for an item than the price marked on the item. Provides that the attorney general and the attorney general's consumer protection division are responsible for the implementation and administration of the pricing requirements. Establishes advertising standards for consumer items. Requires consumer notification if a product offered is defective or is manufacturer rejected goods. Provides for enforcement of requirements and for penalties to violators. Exempts media from liability for
(Continued next page)

Effective: July 1, 1999.

Smith S

January 22, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.



C
o
p
y

Digest Continued

commercial advertising. Allows an action by the attorney general or a prosecutor and a private civil action for violations of pricing rights. Provides for settlement of certain types of overcharges. Allows merchants to settle for difference in price and price charged plus ten times the difference, with a minimum payment of \$1 and a maximum payment of \$5.

C
o
p
y



Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 661

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-9-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The division has the
3 following powers and duties:
4 (1) The power to investigate any written consumer complaint
5 made by a nonmerchant arising from a transaction between a
6 merchant as defined in the Uniform Commercial Code and a
7 nonmerchant concerning sales, leases, assignments, awards by
8 chance, or other dispositions of goods, services, or repairs, and
9 intangibles to a person for purposes that are primarily personal,
10 familial, household, charitable, or agricultural, or a solicitation to
11 supply any of the above things. When a consumer trades in or
12 sells a motor vehicle to another consumer or nonconsumer, he
13 shall be deemed to be a nonconsumer and shall be subject to the
14 provisions of this chapter. The division shall have no jurisdiction
15 over matters concerning utilities subject to regulation by the



utility regulatory commission or by an agency of the United States except that the provisions of subdivision (5) shall apply and except as provided in IC 8-1-29.

(2) For complaints filed after August 31, 1984, the duty to ascertain from the consumer whether he consents to public disclosure by the division of the filing of the complaint, including his identity and telephone number, if any.

(3) The duty to notify the merchant of the nature of the complaint by written communication and request a written reply.

(4) Upon receipt of reply, the duty to act as mediator between the parties and attempt to resolve all complaints in a conciliatory manner.

(5) If no reply is received or if the parties are unable to resolve their differences, and no violation of federal or state statute or rule is indicated, the duty to provide the complainant with a copy of all correspondence relating to the matter.

(6) Whenever a violation of a state or federal law or administrative rule is indicated, the duty to forward to the appropriate state or federal agency a copy of the correspondence and request that the agency further investigate the complaint and report to the division upon the disposition of the complaint.

(7) The power to initiate and prosecute civil actions on behalf of the state whenever an agency to which a complaint has been forwarded fails to act upon the complaint within ten (10) working days after its referral, or whenever no state agency has jurisdiction over the subject matter of the complaint.

(8) The implementation and administration of consumer item pricing rights under IC 24-5-20.

(b) All complaints and correspondence in the possession of the division under this chapter are confidential unless disclosure of a complaint or correspondence is:

- (1) requested by the person who filed the complaint;
- (2) consented to, in whole or in part, after August 31, 1984, by the person who filed the complaint;
- (3) in furtherance of an investigation by a law enforcement agency; or
- (4) necessary for the filing of an action by the attorney general under IC 24-5-0.5.

(c) Notwithstanding subsection (b), the division may publicly disclose information relating to the status of complaints under subsection (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7).

SECTION 2. IC 24-5-20 IS ADDED TO THE INDIANA CODE AS



A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 20. Consumer Item Pricing Rights

Sec. 1. As used in this chapter, "advertising" means all representations disseminated for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of a consumer item, service, good, merchandise, commodity, or real property.

Sec. 2. As used in this chapter, "attorney general" means the attorney general or the attorney general's designee.

Sec. 3. As used in this chapter, "automatic checkout system" means an electronic device, computer, or machine, including an optical scanner, that determines the price of a consumer item by using a product identity code.

Sec. 4. As used in this chapter, "class of item" means a group of consumer items that are identical and offered at the same price. However, the items may differ by brand, style, pattern, color, and size other than weight and volume.

Sec. 5. As used in this chapter, "consumer item" means an article of tangible personal property used or consumed, or bought for use or consumption, primarily for personal, family, or household purposes.

Sec. 6. As used in this chapter, "item" means one (1) or more identical articles sold in identical quantities or measures. An item may include more than one (1) product, brand, kind, size, or type of packaging if the articles are packaged together and sold as a set and the sets are identical in all respects, including quantity or measure.

Sec. 7. As used in this chapter, "person" means an individual, firm, partnership, corporation, association, or other legal entity.

Sec. 8. As used in this chapter, "sale at retail" means the transfer of an interest in a consumer item by a person regularly and principally engaged in the business of selling consumer items to a buyer for use or consumption and not for resale.

Sec. 9. As used in this chapter, "total price" means the full purchase price of a consumer item, excluding sales tax and container deposit.

Sec. 10. The attorney general and the attorney general's consumer protection division is responsible for the implementation and administration of section 11 of this chapter and shall investigate complaints concerning violations of this chapter as the attorney general determines necessary.



1 **Sec. 11. (a) The price of a consumer item displayed or offered**
 2 **for sale at retail must be:**

- 3 (1) clearly and conspicuously indicated in numerals;
 4 (2) readable and understandable by visual inspection; and
 5 (3) stamped upon or affixed to the consumer item.

6 (b) If the consumer item is in a package or container, the price
 7 must be stamped upon or affixed to the outside surface of the
 8 package or container and need not be placed directly upon the
 9 consumer item.

10 (c) The following are exempt from the requirements of this
 11 section:

- 12 (1) A consumer item sold by weight or volume that is not in a
 13 package or container.
 14 (2) A consumer item sold in a vending machine.
 15 (3) Food furnished, prepared, or served for consumption at a
 16 location or on equipment provided by the retail merchant.
 17 (4) A consumer item:
 18 (A) purchased by mail or through catalog order; or
 19 (B) that is not visible for inspection by the consumer at the
 20 time of the sale and is ordered or requested by the
 21 consumer;

22 if the price of the item is on the consumer's written order or
 23 request or on a bill, invoice, or other notice that describes or
 24 names the item and is enclosed with the item.

- 25 (5) An unpackaged food item.
 26 (6) A consumer item that has a weight of not more than three
 27 (3) ounces, a volume of not more than three (3) cubic inches,
 28 and a price of not more than thirty cents (\$0.30).
 29 (7) Live plants.
 30 (8) Live animals.
 31 (9) Motor vehicles.
 32 (10) Motor vehicle parts.
 33 (11) Packages of twenty (20) or fewer cigarettes.
 34 (12) Greeting cards sold individually that have a readable
 35 coded price on the back of the card.
 36 (13) Merchandise ordered as a gift by a consumer that is sent
 37 by mail or other delivery service to a person other than the
 38 consumer by the retailer at the request of the consumer.

39 (d) In addition to the exemptions allowed in subsection (c), a
 40 retailer may choose to not individually price mark not more than
 41 twenty-five (25) classes of items or individual items if the prices of
 42 the classes or items are listed and posted in a conspicuous place in



the retail store. A retailer may choose to not individually price mark not more than twenty-five (25) additional classes of items or individual items that are advertised or featured at a reduced price.

(e) The price and the name or description of a class of items or individual items not marked under subsection (d) must be indicated by a clear, readable, and conspicuous sign in immediate conjunction with the area in which the unmarked item or class of items is displayed.

Sec. 12. (a) A person shall not knowingly charge or attempt to charge for a consumer item a retail sale price exceeding the price required to be indicated under section 11 of this chapter.

(b) It is not a violation of this chapter to charge a lower price for a consumer item than the price indicated under the requirements of section 11 of this chapter.

(c) It is prima facie evidence of a violation of this section that a price charged or attempted to be charged as a result of electronic identification or calculation by an automatic checkout system exceeds the price required to be indicated under section 11 of this chapter.

Sec. 13. (a) This section does not apply to baked goods, fresh fruit, and fresh vegetables.

(b) A person may not knowingly advertise the availability of a consumer item for sale at:

- (1) retail;
- (2) a sale;
- (3) a special price; or
- (4) a reduced price or percentage;

unless the advertisement includes the dates the item is available or the quantity available at the advertised price and information that the item is available at the price only as long as the advertised quantity lasts. A limitation on the quantity available of a consumer item per customer shall be clearly disclosed in an advertisement of the consumer item.

(c) If a consumer item is advertised through the media at a specific price that is not indicated to be a special, sale, or reduced price, the advertiser shall do one (1) of the following:

- (1) Make the consumer item available at the advertised price for at least five (5) days after the date the consumer item was last advertised. The advertiser is not required to make the consumer item available if the unavailability of the consumer item is due to a governmental action, a plant closing, or an act of God and if the specific cause of the unavailability of the



consumer item is posted conspicuously for review by the consumer.

(2) Indicate in the advertisement the dates the consumer item is available at the advertised price. If the item is not available for the period of time indicated, the requirements of section 11 of this chapter apply.

(3) Indicate in the advertisement the quantity available at the advertised price and the information that the consumer item is available at the advertised price only as long as the stated quantity lasts.

(d) If an advertisement under this section does not state the quantity of the consumer item available and if an item cannot be sold at the advertised price throughout the advertised period of sale, the advertiser shall make available to the customer a written guarantee to deliver under the advertised conditions the consumer item at a future date stated in the guarantee or upon notification of the customer by the merchant. If the advertised consumer item cannot be obtained to satisfy the condition of the guarantee, the advertiser may provide a similar consumer item of equal or greater monetary value. The notification of availability must take place not more than ninety (90) days after the guarantee is given. After the notice of availability is given, the merchant shall hold the consumer item for delivery to the customer for not less than seven (7) days. The merchant need hold the consumer item for only two (2) days if it is a perishable item.

Sec. 14. (a) A person may not knowingly make, publish, disseminate, circulate, or place before the public an advertisement that contains a statement or representation that is untrue, deceptive, or misleading.

(b) The failure to sell goods, merchandise, commodities, or services in the manner advertised or the refusal to sell goods, merchandise, commodities, or services at the advertised price or in accordance with other terms and conditions of the advertisement creates a rebuttable presumption of an intent to violate this chapter.

(c) In determining whether an advertisement is deceptive or misleading, the extent to which the advertisement fails to reveal facts that are material in light of the representations made or suggested in a positive manner shall be taken into account.

(d) A person may not make, publish, disseminate, circulate, or place before the public an advertisement with the intent, design, or purpose not to sell at the price stated in the advertisement or



C
O
P
Y

otherwise communicated or with intent not to sell the goods, merchandise, commodities, or service advertised.

(e) A person may not advertise, call attention to, or give publicity to the sale of goods, merchandise, or commodities that:

(1) are known to be substantially defective; or

(2) consist of articles or units or parts known as seconds or blemished goods, merchandise, or commodities and have been rejected by the manufacturer of the goods, merchandise, or commodities as not being first class;

unless there is displayed directly in connection with the name and description of the goods, merchandise, or commodities a notification to the consumer that clearly indicates that the goods, merchandise, or commodities advertised are seconds or are blemished goods, merchandise, or commodities, or have been rejected by the manufacturer of the goods, merchandise, or commodities.

Sec. 15. This chapter does not apply to an owner, publisher, printer, agent, or employee of a newspaper or other publication, periodical, circular, including those circulars prepared for national distribution, or outdoor advertising or of a radio or television station, who in good faith and without knowledge of the falsity or deceptive character of an advertisement, publishes, causes to be published, or takes part in the publication of an advertisement in violation of this chapter.

Sec. 16. (a) The attorney general may maintain an action to enjoin a continuing violation of this chapter. If the court finds that the person is violating or has violated this chapter, the court shall enjoin the person from a continuance of the violation. It is not necessary that actual damages to a person be alleged or proved.

(b) A proceeding may not be instituted for an injunction unless the attorney general has notified the person of the intention to seek an injunction if the person does not discontinue or take positive action to discontinue a violation alleged under this chapter. The notice must be given at least forty-eight (48) hours before the filing of the action. An injunction may not be issued if the person has discontinued or has taken positive action to discontinue a violation alleged under this chapter.

(c) The attorney general may accept an assurance of discontinuance of a practice alleged to be in violation of this chapter from the person engaging in, or who was engaged in, that practice. The assurance of discontinuance must be in writing and must be filed with the clerk of the circuit court of the county in



1 which the alleged violator resides or in which the alleged violator's
 2 principal place of business is located. A filing fee is not required for
 3 the filing of an assurance with the clerk of the circuit court. The
 4 assurance of discontinuance shall be signed by the person and must
 5 contain a statement describing the acts or practices for which the
 6 assurance of discontinuance is being given and the specific sections
 7 of the law prohibiting those acts or practices. The assurance is not
 8 an admission of any fact or issue at law.

9 (d) A prosecuting attorney or law enforcement officer receiving
 10 notice of an alleged violation of this chapter, or of a violation of an
 11 injunction, order, decree, or judgment issued in an action brought
 12 under this section, or of an assurance under this chapter, shall
 13 immediately forward written notice of the violation and
 14 information the prosecuting attorney has to the office of the
 15 attorney general.

16 (e) A person who knowingly violates this chapter or the terms
 17 of an injunction, order, decree, or judgment issued under this
 18 section shall pay to the state a civil penalty of not more than one
 19 thousand dollars (\$1,000) for the first violation and not more than
 20 five thousand dollars (\$5,000) for each subsequent violation. For
 21 purposes of this section, the court issuing an injunction, order,
 22 decree, or judgment retains jurisdiction, the cause must be
 23 continued, and the attorney general may petition for recovery of a
 24 civil penalty as provided by this section.

25 (f) The attorney general may adopt rules under IC 4-22-2 to
 26 implement and administer this section.

27 Sec. 17. (a) Whether or not a person seeks damages or has an
 28 adequate remedy at law, a person may bring an action to do either
 29 or both of the following if the attorney general or prosecuting
 30 attorney fails to initiate action within sixty (60) days after receiving
 31 notice of an alleged violation of this chapter:

32 (1) Obtain a declaratory judgment that a practice is in
 33 violation of this chapter.

34 (2) Enjoin by temporary or permanent injunction a person
 35 who is engaging or is about to engage in a practice in violation
 36 of this chapter.

37 (b) Except as provided in section 18 of this chapter, an
 38 individual who suffers loss as a result of a violation of this chapter
 39 may bring an individual or a class action to recover the greater of
 40 actual damages or two hundred fifty dollars (\$250) for each day on
 41 which violations of this chapter have been found. An action
 42 brought under this subsection may also recover reasonable



attorney's fees not to exceed three hundred dollars (\$300) in an individual action.

Sec. 18. (a) This section does not apply to a sale at retail if the seller intentionally charges more for an item than the price stamped on or affixed to the item.

(b) This section applies to a sale at retail that meets all of the following conditions:

(1) There is a price stamped on or affixed to the item.

(2) The sale is recorded by an automatic checkout system.

(3) The buyer is given a receipt that describes the item and states the price charged for the item.

(c) Before bringing or joining in an action as provided in section 17 of this chapter, within thirty (30) days after purchasing an item, a buyer who suffers a loss because the price charged for the item is more than the price stamped on or affixed to the item must notify the seller in person or in writing that the price charged is more than the price stamped or affixed. The notice must include evidence of the loss suffered by the buyer. If, within two (2) days after the notification, the seller tenders to the buyer an amount equal to the difference between the price stamped or affixed and the price charged, plus an amount equal to ten (10) times that difference but which is not less than one dollar (\$1) or more than five dollars (\$5), the buyer is barred from any further recovery for the loss. If the loss is suffered by one (1) buyer within one (1) transaction on two (2) or more identical items, the amount to be tendered by the seller equals the difference on each item plus an amount equal to ten (10) times the difference on one (1) item but which is not less than one dollar (\$1) and not more than five dollars (\$5). If the seller does not tender the amount, the buyer may bring or join in an action as provided in section 17 of this chapter.

Sec. 19. A prosecuting attorney may conduct an investigation and may institute and prosecute an action under this chapter in the same manner and using the same procedure as the attorney general.

Sec. 20. This chapter does not affect any other cause of action that is available and shall be liberally construed to effectuate its purpose. A political subdivision may not enact an ordinance or other regulation inconsistent with this chapter or with a rule adopted under this chapter.

